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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965
No. 88

In the Matter of Disciplinary Proceedings Against
NEIL S. MACKAY, an Attorney at Law

Petitioner.

Memorandum on Behalf of The Supreme Court of Alaska

The Attorney General of Alaska has taken the position that he has no authority to act with respect to a case involving the discipline of a member of the Bar. The finding of the Board of Governors of the Alaska Bar Association favorable to Petitioner was reviewed and overruled by the judgment of the Supreme Court of Alaska and accordingly the Board of Governors has no interest in opposing the Petition for Certiorari. Unless the Supreme Court of Alaska responds to the Petition, there will be no reply to it.

In view of the precedents for a reply to a Petition for Certiorari by a Court since *Ex parte Wall,* 107 U.S. 265, 27 L.ed 552 (1883) and in view of statements made in the Petition which are not justified by the record, the Supreme Court of Alaska believes that this Court should have the benefit of a response to the Petition and therefore it has authorized counsel to file this Memorandum on its behalf.[1]

[1] The time for the filing of this reply was extended until June 29, 1965.

Its reply is not designated a Brief in Opposition because the Supreme Court of Alaska takes no position as to whether the Petition should be granted or denied.

The unanimous opinions of the Supreme Court of Alaska finding Petitioner guilty of improper professional conduct, suspending him from the practice of the law for one year and rejecting the technical objections to its jurisdiction are not in conflict with any opinion of this Court. Nor are they in conflict with that of any Circuit Court of Appeals or of any Federal District Court.

STATEMENT

The Supreme Court of Alaska found in its opinion of October 26, 1964, that Petitioner, an experienced member of the Bar in Anchorage, Alaska, had taken advantage of his client, an illiterate Finnish woman, and as a consequence had enriched himself at her expense in the amount of $7,500.00 without reference to the legal fees he had received for services performed as her attorney. (Pet. App. p. 10-20). The Supreme Court of Alaska directed that Petitioner be disbarred. (Pet. App. p. 20).

Upon Petition for Rehearing, in which Petitioner represented to the Court a willingness to make restitution, the Court in an opinion filed January 30, 1965, reduced Petitioner's punishment from disbarment to suspension from the practice of law for a period of one year provided that reinstatement be conditional upon his payment to his client or, if appropriate, to the State of Alaska[2] of the sum of $7,500.00. (Pet. App. 31, 33).

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[2] The State of Alaska has a claim against Petitioner's client of over $6,000.00 by reason of the fact that since her business transactions with Petitioner she has been on State relief. (Pet. App. 32).

The Alaska Bar Association commenced this disciplinary proceeding in 1961 by filing a complaint against Petitioner charging him with misconduct in his office as an attorney by cheating or over-reaching his client. (Pet. App. 1). The case was heard in September, 1961, before a trial committee of the Alaska Bar Association in conformity with Rules 8 and 9 of Rules of Procedure Relative to Disbarment (Pet. App. 2, 3). After the taking of testimony, which was transcribed, and the arguments of counsel for Petitioner, a majority of the trial committee concluded that there was a "deficiency in conduct on the part of the accused as over-reaching of the client" and recommended that Petitioner be suspended from the practice of law "for not more than six months as the Board of Governors feels appropriate." (Pet. App. 2).

This finding of the trial committee was reviewed by the Board of Governors of the Bar Association on the transcript of the testimony taken before the trial committee at hearings on November 30, 1961, and December 1, 1961, which included arguments of counsel for Petitioner. The Board voted 4 to 2 to concur in the dissenting opinion of a member of the trial committee. (Pet. App. 3, 4). The Board dismissed the complaint. Since then the original transcript of the testimony taken before the trial committee has been missing. (Pet. App. 5).

A statute in effect at the time the trial committee and the Board of Governors acted in this matter provided:

> "Upon finally determining any cause involving the discipline, disbarment, suspension or reinstatement of a member of the Alaska Bar, the Board of Governors *shall certify its findings and recommendations thereon to the Supreme Court of Alaska.* Upon receiving the findings and recommendations, the Court shall, within thirty days thereafter, issue an order of disbarment,

suspension, reinstatement, dismissal or otherwise, in full accordance with the recommendations of the Board." (Pet. App. 4). Emphasis added.

It is undisputed that the Board of Governors did not certify its findings and recommendations to the Alaska Supreme Court as required by the statute or otherwise make them known to the Court.

This case and its disposition by the Board of Governors did not come to the attention of the Supreme Court of Alaska until August, 1964, when it was referred to in a letter of the Attorney General of Alaska to the Court. (Pet. App. 32). The Court promptly notified Petitioner that it proposed to take cognizance of the charges against him and that he would be accorded a hearing on September 12, 1964. (Pet. App. 54). Counsel for Petitioner filed motions to preclude review by the Court of the administrative disciplinary proceeding and argued the case before the Court on September 24, 1964, claiming lack of jurisdiction, *res adjudicata* and the absence of a complete record.[3]

In its opinion of October 26, 1964, the Supreme Court of Alaska held that, insofar as the statute attempted to impose upon the Court the mandatory duty of issuing an order in full accordance with the recommendations of the Board of Governors, it was unconstitutional as an invasion of the inherent powers of the Court to discipline members of the Bar.

The inherent power of a state supreme court to discipline members of the Bar as officers of the courts, has been

[3] Since the original transcript was not available, the case was heard by the Court upon an office copy of the three volume transcript of testimony forwarded to the Supreme Court of Alaska by the official court reporter for the United States District Court for the District of Alaska who had recorded the proceedings before the trial committee. (Pet. App. 41, 42).

recognized by the Supreme Courts of numerous states.[4] The Court's conclusion that it could exercise its inherent power with respect to the discipline of attorneys upon its own initiative has also been recognized by the Courts of other states. *In re Hallinan,* 43 Cal. 2d 243, 272 P.2d 768, 775 (1954); *In re Association of Bar,* 222 App. Div. 580, 227 N.Y.S. 1, 8-10 (1928). The court's determination that its constitutional powers with respect to the discipline of attorneys could not be defeated by the legislative branch of goverment has been established by the Supreme Courts of California, Georgia, Missouri and Utah.[5] This Court has also recognized that state courts have the inherent power to discipline members of the Bar. *Martin* v. *Walton,* 368 U.S. 25 (1961). See also *Saier* v. *State Bar,* 293 F.2d 756, 759, 760 (6th Cir. 1961) cert. denied 368 U. S. 947 (1961).

I

Petitioner's Contention That The Supreme Court Of Alaska Deprived Him Of His Right To Have Federal And Constitutional Questions Decided By The United States District Court For Alaska

There has been a pending suit in the United States District Court for the District of Alaska on behalf of the

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[4] *In re Sullivan,* 64 Ariz. 337, 170 P.2d 614, 615 (1946); *In re Accusation by Walker,* 32 Cal. 2d 488, 196 P.2d 882 (1948); *In re Hallinan,* 43 Cal. 2d 243, 272 P.2d 768, 775 (1954); *In re Lavine,* 2 Cal. 2d 324, 41 P.2d 161, 162, modified on another point 2 Cal. 2d 324, 42 P.2d 311 (1935); *People ex rel. Colorado Bar Ass'n* v. *Irwin,* 60 Colo. 177, 152 Pac. 905, 908 (1915); *Application of Harper,* 84 So. 2d 700, 706, 54 A.L.R.2d. 1272 (Fla. 1956); *In re Trask,* 46 Hawaii 404, 380 P.2d 751, 758 (1963); *Martin* v. *Davis,* 187 Kan. 473, 357 P.2d 782, 787-88 (1960); *In re Richards,* 333 Mo. 907, 63 S.W.2d 672, 674 (1933); *In re Watson,* 71 Nev. 227, 286 P.2d 254, 53 A.L.R.2d. 301 (1955); *In re Farris,* 229 Ore. 209, 367 P.2d 387, 397 (1961); *Ruckenbrod* v. *Mullins,* 102 Utah 548, 133 P.2d 325, 330, 144 A.L.R. 839 (1943); and *In re Bruen,* 102 Wash. 472, 172 Pac. 1152, 1154 (1918).

[5] *In re Lavine,* supra; *DeKrasner* v. *Boykin,* 54 Ga. App. 29, 186 S.E. 701, 703-04 (1936); *State ex rel. Clark* v. *Shain,* 343 Mo. 542, 122 S.W. 2d 882 (1938); *Ruckenbrod* v. *Mullins,* supra.

Alaska Bar Association and its members against the Supreme Court of Alaska and its members (1) to invalidate court rules, known as the Alaska Bar Rules, effective June 1, 1964, regulating the Alaska Bar Association, an integrated Bar deemed an instrumentality of the State of Alaska and (2) to invalidate orders of the Supreme Court of Alaska of July 23, 1964, imposing temporary sanctions upon the Board of Governors of the Association by suspending the members of the Board and appointing a temporary trustee to conduct the affairs of the Association. These orders were issued after the members of the Association at its convention in May, 1964, had instructed its Board of Governors to refuse to comply with the Alaska Bar Rules and the members of the Board of Governors had indicated to the Alaska Supreme Court that they would not comply with them. The temporary sanctions which were imposed to vindicate the Court's authority were deemed less severe than the alternative of contempt citations.

When counsel for the Association, its Board of Governors and members notified the Court that they would comply with the new rules unless and until they were declared invalid by a court of competent jurisdiction, the Supreme Court of Alaska on September 8, 1964, revoked the take-over orders, terminated the trusteeship and directed that the funds, books and records of the Association be restored to it.

A summary of the proceedings before the 3 judge Federal District Court is set forth in Appendix A.

Any parties disappointed with the final decision in the 3 judge District Court case may have the right to a direct appeal to the Supreme Court under 28 U.S.C. Sec. 1253.

Petitioner contends that the Supreme Court of Alaska should have abstained from proceeding with his disciplinary

case pending decision of the Federal District Court case. Petitioner filed no motion requesting the Alaska Supreme Court to abstain in his disciplinary case before the opinion of that court deciding the case on October 26, 1964 (Pet. App. 55-57). Nor did Petitioner even make such a contention in his Petition for Rehearing. (Pet. App. 36-41).

On the merits there appears to be no substance to the contention.

1. The complaint and the amended complaint in the Federal District Court case made no reference to the Mackay case.

2. The Federal District Court had no jurisdiction with respect to a disciplinary case pending for decision before the Supreme Court of Alaska.

3. The legal questions raised by Petitioner in his motions to dismiss before the Supreme Court of Alaska related primarily to questions of state law, i.e., whether the decision of the Board of Governors of the Alaska Bar Association favorable to Mackay was conclusive, whether the provisions of a statute imposing the mandatory duty upon the Supreme Court of Alaska to accept and implement ~~any findings~~ of the Board of Governors in disciplinary cases was valid under the Constitution of Alaska or invalid as a violation of the inherent powers of the Alaska Supreme Court, whether the decision of the Board of Governors was *res adjudicata*, whether the court could hear the case upon a copy of the transcript.

4. The Supreme Court of Alaska could not abdicate its authority and responsibility to decide a disciplinary case before it because of the pendency in a Federal District Court of a very different case involving the validity of the

Alaska Bar rules regulating the Bar Association and the validity of the take-over orders.

5. Federal District Courts in appropriate circumstances are required under the *Pullman* doctrine to abstain to enable state courts to determine authoritatively important state law questions. The doctrine presupposes the desirability of the state courts, which may only determine finally and authoritatively state law questions, deciding such questions for the benefit of the federal courts. Accordingly only the state supreme court could authoritatively and finally determine that under the Constitution of Alaska the provisions of the statute requiring the court to accept any recommendation of the Board of Governors of the Bar Association in a disciplinary case was invalid.

Petitioner relies upon *England* v. *Louisiana State Board of Medical Examiners,* 375 U.S. 411 (1964). There a suit was filed in a Federal District Court to invalidate a state statute. The Federal court abstained under the *Pullman* doctrine until questions of state law had been authoritatively determined in the state courts. After a decision of the Supreme Court of the State had been rendered sustaining the validity of the statute, Plaintiffs attempted to return to the Federal District Court rather than seek certiorari to this Court. The sole question involved in the District Court and in this Court was whether there had been an adequate reservation by plaintiffs of an election to return to the District Court for the determination of federal questions.

The Mackay case involved charges of improper conduct before a trial committee of the Alaska Bar Association, review by the Board of Governors and later review by the Alaska Supreme Court. The case could not have been

originally instituted in a Federal District Court, and, of course, there was no abstention by a Federal District Court under *Pullman* as in *England.*

The statement in the Petition that the rule of *England* requires a state court to abstain from decision if a litigant chooses a federal court to decide federal and constitutional questions (Pet. App. 15) is not in accord with the decision in that case.

II

The Contention Of Petitioner That He Was Deprived Of Due Process Because All The Members Of The Supreme Court Of Alaska Were Biased Against Him

The members of the Supreme Court of Alaska disclaimed that they were biased or prejudiced against Petitioner and disclaimed that they had any hostile feeling or spirit of ill will toward him (Pet. App. 26). In its opinion the Court pointed out that under Alaska law there was no other court, which had jurisdiction to review the administrative action of the trial committee and of the Board of Governors.

If a claim of bias on the part of all the members of a Supreme Court were sufficient to disqualify them, when no other court can act, the exercise by the Court of its constitutional and statutory jurisdiction could readily be frustrated. The rule of disqualification must yield to the demands of necessity and judges may act in a proceeding in which they might otherwise be disqualified if their disqualification would destroy the only tribunal which can act. chooses a federal court to decide federal and constitutional *Evans* v. *Gore* 253 U.S. 245, 247 (1920); *Tumey* v. *Ohio* 273 U.S. 510, 522 (1926); *Brinkley* v. *Hassig* 83 F.2d 351, 357 (10th Cir. 1936).

III

The Contention That Petitioner Was Deprived Of Due Process Because The Supreme Court Of Alaska Utilized A Copy Of The Transcript Of Evidence And Not The Original Transcript Which Was Not Available

(a) The extensive record before the Alaska Supreme Court filed in this court appears to contain the complete verbatim testimony of all witnesses. The record also includes copies of the pleadings which had been obtained from a member of the trial committee. Since the Board of Governors heard no witnesses and overruled the recommendation of the trial committee upon the record made before the trial committee, it would appear that the Alaska Supreme Court in overruling the Board had in actuality the same record before it as the Board of Governors.[5a]

The Petition states "An appellate court reviews only a certified transcript of the evidence taken at a formal hearing." (Pet. App. 16). The motions submitted to the Alaska Supreme Court complained of the "limited" record before the Court but the motions did not show that the copy of the transcript before the Alaska Supreme Court was incorrect or inadequate or prejudicial in any particular respect. (Pet. App. 55-57). Petitioner did not elect to submit any testimony before the Supreme Court of Alaska nor did he move to supplement the record before that Court. If the loss of the original record of a case below precluded review by an appellate court in a civil proceeding such as this, it would provide an incentive to a party or an administrative tribunal to destroy the original record. Such a dangerous doctrine has not been accepted by any court anywhere.[6]

[5a] An index of the record is contained in Appendix B.

[6] Even in a criminal case if a record can be prepared in such a manner as to enable the appellate court to pass on the questions involved, the impossibility of securing a verbatim transcript certified by the official court reporter does not preclude review. *People* v. *Chessman*, 35 Cal. 2d 455, 218 P.2d 769, 19 A.L.R. 2d 1084 (1950).

The general rule is that an appeal can be heard on a record prepared without literal compliance with court rules where such compliance has become impossible, where the record presented is adequate to enable the appellate court to pass on the questions involved and where the party complaining of the lack of literal compliance makes no showing that the record presented contains prejudicial error. *People* v. *Chessman,* 35 Cal. 2d 455, 218 P.2d 769, 19 ALR 2d 1084 (1950) cert. denied 340 U. S. 840; 4 Am. Jur. 2d, *Appeal and Error.*

Alaska Supreme Court Rule 9(k) and Federal Civil Rule 75(n) provide for appeals when *no* stenographic record was made of the proceedings at the hearing below, thus negativing Petitioner's claim that an appeal can only be heard upon a certified record. The death of a court reporter prior to completion of the lower court record has consistently been held to be insufficient ground for a new trial when any other method of securing the desired record is available. For this purpose appellate courts have utilized the notes of trial counsel, recollection of the evidence by trial judge and counsel, and notes of the deceased reporter transcribed by another reporter.

Chessman v. *Teets,* 350 U.S. 3 (1955), relied upon by Petitioner, held that an application for *habeas corpus* in a criminal case should not have been summarily dismissed when the petition charged that the prosecuting attorney had participated in the preparation of a fraudulent transcript of the testimony.

(b) The Alaska Supreme Court did not deny Petitioner the right to a trial *de novo* because Petitioner did not request or claim such a right. Petitioner's Motion to Dismiss merely generalized that the record was too inadequate for the Court to act without a new trial. (Pet. App. 55). It was not until *after* the Alaska Supreme Court had decided the

case that in his Petition for Rehearing Petitioner asserted that, if he "had been afforded a trial *de novo* he could have overcome by competent evidence the charge of irregularities before the Board." (Pet. App. 38). If this assertion be deemed a request for a trial *de novo*, it came too late.

(c) Petitioner claims that he was denied the right to be confronted with witnesses by reason of the utilization by the Alaska Supreme Court of the copy of the transcript of testimony taken before the Trial Committee. (Pet. App. 17, 18). The transcript shows that counsel for Petitioner participated in the extensive hearings before the trial committee, submitted testimony and cross-examined witnesses. Thus, Petitioner's right to be confronted by witnesses was protected.

IV

Petitioner's Contention That The Alaska Bar Rules Were Given Retroactive Effect.

Petitioner says that the Alaska Bar Rules, which provided for direct review by the Alaska Supreme Court of trial committee disciplinary recommendations were given retroactive effect. (Pet. App. p. 18). These procedural rules were in effect from June 1, 1964 until they were superseded by new rules agreed upon by the Supreme Court and the Bar Association and provided for in a Court Order of January 29, 1965. Thus they were in effect when the Alaska Supreme Court took cognizance of the case, held the hearing and decided the case. An interpretation of the Alaska Bar Rules, by the Alaska Supreme Court, relative to procedural matters would appear to involve no more than a state question.

Even if these Rules had not been in effect, the Alaska Supreme Court had authority to review the administrative

recommendation of the Board of Governors when (1) the Board of Governors did not certify its recommendation in the *Mackay* case to the Alaska Supreme Court in violation of the statute and (2) the provision of the statute requiring the state Supreme Court to accept and implement *any* recommendation of the Board of Governors was invalid under Alaska law—as the Alaska Supreme Court has held.

V.

Petitioner's Contention That He Was Deprived Of Due Process Because The Supreme Court Of Alaska Was Estopped To Take Disciplinary Action Against Him Since He Had Been Exonerated By The Board Of Governors Of The Alaska Bar Association.

The general rule is that a bar association may only *recommend* disciplinary action; final action can only be taken by a state supreme court. In matters of discipline of lawyers, a state bar association is merely an arm of a state supreme court, and such court retains its inherent power to take final action. The court is not bound to accept the facts found by the state bar; it exercises original jurisdiction and may treat the administrative findings of a state bar association as it would treat the findings or recommendations of a referee or master. By whatever name a disciplinary proceeding may be called, it is in essence the initial stage of a court action.[7] Accordingly the Supreme Court of Alaska was not bound by a finding of the Board of Governors which was no more than a recommendation.

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[7] *Brotsky* v. *State Bar*, 57 Cal. 2d 287, 368 P.2d 697, 94 ALR 2d 1310; *Re Petersen*, 208 Cal. 42, 280 P. 124 (1929); *Johnson* v. *State Bar*, 4 Cal. 2d 744, 52 P.2d 928 (1935); *Re Edwards*, 50 Idaho 238, 294 P. 847 (1930); *Re Gibson*, 35 N.M. 550, 4 P.2d 643 (1931); *Re Kitchen* 68 P.2d 1068 (Or. 1937); *Re Smith*, 134 P.2d 956 (Or. 1943); *Re McCullough*, 97 Utah 533, 95 P.2d 13 (1939); *Re Van Bever*, 55 Ariz. 368, 101 P.2d 790 (1940); *Re Christopher*, 181 Okla. 323, 73 P.2d 851 (1937).

A case relating to the discipline of a member of the bar is very different from one involving the disciplinary function of a state board of medical examiners or dental examiners because the members of those professions are not persons who are officers of a court and are not under the control and regulation of the court. *Re Bruen,* 102 Wash. 472, 172 P. 1152 (1918).

CONCLUSION

The Supreme Court of Alaska takes no position as to whether the Petition for a Writ of Certiorari should be granted or denied.

Respectfully submitted,

GEORGE COCHRAN DOUB,
BARRY D. BERMAN,
Attorneys for the Supreme Court of Alaska

Of Counsel:

WEINBERG & GREEN.

June, 1965.

Appendix A

SUMMARY OF PROCEEDINGS IN THE FEDERAL DISTRICT COURT CASE

Upon the institution of this suit referred to in the Memorandum at p. 5 counsel for defendants filed a motion to dismiss for lack of jurisdiction on various grounds including (1) there was no case or controversy arising under the laws of the United States, (2) the District Court had no authority to review, modify or reverse orders of a state Supreme Court, (3) the validity of the orders of the state supreme court were only subject to review by the Supreme Court of the United States, (4) when a Court, whether federal or state, takes possession of a res, the property is withdrawn from the reach of the other and, since the state supreme court had first acquired control of the res, the District Court had no authority to exercise any power over it, (5) this suit was in substance an action by the Bar Association, an instrumentality of the State of Alaska, against the Alaska Supreme Court, another branch of the state government, and accordingly the suit could not be maintained in the Federal District Court and (6) the Supreme Court of Alaska and its members could not be sued for their official acts. Counsel for defendants also filed a motion to abstain under the *Pullman* doctrine to enable the plaintiffs to obtain an authoritative decision of the Alaska Supreme Court as to the questions of state law involved.

At an extensive hearing in Anchorage in October, 1964, the 3 judge Federal District Court overruled the motions but reserved decision as to all other legal issues.

The Court urged the parties and their counsel to seek a solution to this unfortunate controversy which so obviously was detrimental to the administration of justice in Alaska. There ensued settlement conferences in Juneau on December 17 and 18, 1964, between the members of the Supreme Court of Alaska, the members of the Board of Governors of the Alaska Bar Association, counsel for all plaintiffs in the District Court proceeding and an American Bar

Association mediation committee consisting of Chief Justice MacAllister of Oregon, Chief Justice Rosellini of Washington and former Dean Alfred J. Schweppe.

As a result of the meetings it was agreed at Juneau that, subject to the approval of the Bar, the Supreme Court would approve new rules patterned after those of the States of Oregon and Washington which were agreed upon, and would jointly sponsor with the Bar Association new legislation with respect to the Association. At the conclusion of the meetings a stipulation providing for the dismissal of the District Court case upon completion of the conditions subsequent was signed by the Chief Justice of the Supreme Court and the President of the Bar Association.

The settlement terms were then submitted to the members of the Alaska Bar in a referendum and ratified by a vote of 94 to 54. In reliance upon the settlement agreement the Chief Justice and the President of the Bar Association jointly recommended to the Legislature the agreed upon legislative bill and by Order dated January 29, 1965, effective February 8, 1965 the Supreme Court revoked the Alaska Bar Rules and approved the new rules agreed upon at the Juneau meetings.

Thereafter the Bar Association attempted to repudiate the settlement upon various grounds: (1) the members of the Board of Governors had acted in their individual capacity at the meetings in Juneau and not as an official Board, (2) the new rules agreed upon required later official Board action, (3) at a later special meeting of the Bar held on short notice in Anchorage a majority present had voted to continue the litigation and (4) a second referendum had resulted in a majority vote of the members of the Bar voting to continue the litigation.

Counsel for the Supreme Court of Alaska filed motions to dismiss on the ground that the Juneau settlement agreement was valid and binding and that the issues in the Federal Court case had become moot. Counsel for plaintiffs

in their answer and briefs in opposition asserted the points made above.

At the outset of hearings in the District Court in Anchorage June 14-17, 1965, the Court heard a motion of defendants to strike a supplemental complaint which sought to have the court review the decision of the Alaska Supreme Court in the Mackay disciplinary case. This motion was granted. A supplemental complaint filed by Mackay a few days before the hearing for the same purpose without leave of court was stricken.

Thereafter plaintiffs abandoned of record all contentions made above but asserted that there was an inconsistency between paragraph 3 of the Order of the Alaska Supreme Court dated January 29, 1965, and a sentence in Rule 1, Section 25. Paragraph 3 of the Order provided that disciplinary cases[1] pending at the effective date of the Order, i.e. February 8, 1965, should be processed in accordance with Rule 9 of the Alaska Bar Rules. Section 25 of Rule 1 provided that Rule 1 should apply to all pending matters of misconduct so far as may be practicable.

Although the inconsistency had not been called to the attention of the Alaska Supreme Court before June 14, 1965, the District Court expressed the view that the Alaska Supreme Court should correct it by revoking paragraph 3 of its Order. Since it was desirable that there be no uncertainty as to how a disciplinary case pending on the effective date of the order should be processed, the Alaska Supreme Court authorized counsel to advise the District Court that it proposed to issue an order in the following form revoking paragraph 3 of its January 29, 1965, Order and a certified copy of the Order would be filed with the District Court:

[1] The testimony at the hearings indicated that there was only one such case and it was pending before a trial committee.

"THE SUPREME COURT OF THE STATE OF ALASKA

Order No. 76

"WHEREAS, this Court included Paragraph 3 in its Order No. 75 at the suggestion of the President of the Alaska Bar Association; and,

"WHEREAS, it was called to the attention of this Court for the first time on June 14, 1965, that there is an inconsistency between the provisions of Paragraph 3 of Order No. 75 and a provision of Rule I, Section 25 as approved by Paragraph 2 of Order No. 75; and,

"WHEREAS, the inconsistency could lead to uncertainty in the processing of disciplinary cases pending on the effective date of Order No. 75;

"NOW THEREFORE, it is ORDERED that Paragraph 3 of Order No. 75 is rescinded as of the date of Order No. 75.

DATED: June 16, 1965.

/s/ BUELL A. NESBETT,
Chief Justice,

/s/ J. A. RABINOWITZ,
Associate Justice,

/s/ JOHN H. DIMOND,
Associate Justice."

When so advised by counsel for the Alaska Supreme Court, the District Court announced that upon receipt of a certified copy of the Order the case would be dismissed.

On June 16, 1965, the Alaska Supreme Court promulgated the order and on June 25, 1965 a certified copy was filed with the District Court.

Appendix B
INDEX OF THE RECORD

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File 2

TRANSCRIPT

(Alaska Bar Association before the Board of Governors)

3 Volumes

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